

**REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed April 18, 2005. Through this response, independent claims 1, 18, and 34 have been amended, and claims 4-6 and 22-23 have been canceled without prejudice, waiver, or disclaimer. Reconsideration and allowance of the application and pending claims 1-3, 7-15, 17-21, 24-30, 32-34, and 36-47 are respectfully requested.

**I. Claim Rejections - 35 U.S.C. § 102(b)**

**A. Statement of the Rejection**

Claims 1-3, 5, 6, 10, 15, 17, 18, 20, 21, 24, 32-34, 36, 37, 41, 42 and 47 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by *Cottom* (“*Cottom*,” U.S. Pat. No. 650,824). Applicant respectfully traverses this rejection.

**B. Discussion of the Rejection**

It is axiomatic that “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983)(emphasis added). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b). Applicant respectfully submits that *Cottom* does not disclose all of the claimed features.

## Independent Claim 1

Claim 1 recites (with emphasis added):

1. A masonry unit for use in mortared wall structures, said unit comprising:  
a first surface; and  
***a mortar buffer that at least partially surrounds the first surface, wherein the mortar buffer is configured to receive and retain mortar, wherein the configuration comprises the mortar buffer joining the first surface with adjacent surfaces of the masonry unit at an approximately thirty degree angle of inclination between the first surface and each of the adjacent surfaces.***

Applicant respectfully submits that *Cottom* does not disclose at least the emphasized claim features. The Office Action asserts on page 2 that “the language ‘configured to reduce spillage’ fails to provide any structural limitation.” Assuming the Office Action is equating “configured to reduce spillage” to “configured to receive and retain mortar,” Applicant has amended the claim language to incorporate the features of canceled claim 4 to clarify that the structural configuration (***an approximately thirty degree angle of inclination***) enables the functional significance in facilitating mortar application.

Since *Cottom* does not disclose the emphasized claim features, Applicant respectfully submits that *Cottom* does not anticipate at least the emphasized claim features and respectfully requests that the rejection to claim 1 be withdrawn. Because independent claim 1 is allowable over *Cottom*, dependent claims 2-3, 7-15 are allowable as a matter of law for at least the reason that the dependent claims 2-3, 7-15 contain all elements of their respective base claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Additionally, although the Office Action asserts on page 2 that the “angle of inclination shown in the figures appears to be approximately 45 degrees,” Applicant notes that nothing in *Cottom* discloses that the drawings of *Cottom* are to scale. The Manual of Patent Examining Procedure (MPEP), section 2125, provides that “[W]hen the reference does not disclose that the

drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.”

### Independent Claim 18

Claim 18 recites (with emphasis added):

18. A masonry unit for use in mortared wall structures, said unit comprising:  
a front surface;  
a back surface opposing the front surface;  
a top surface;  
a bottom surface opposing the top surface;  
a first side surface;  
a second side surface opposing the first side surface; and  
a mortar buffer that at least partially surrounds the front surface and joins the front surface with the top surface, the bottom surface, and the first and the second side surfaces along a substantially constant angle of inclination between the front surface and each of the top surface, the bottom surface, and the first and the second side surfaces, ***wherein the mortar buffer is configured to receive and retain mortar, wherein the configuration comprises a width of the mortar buffer of approximately 7/32 inches.***

Applicant respectfully submits that *Cottom* does not disclose at least the emphasized claim features. The Office Action asserts on page 2 that “the language ‘configured to reduce spillage’ fails to provide any structural limitation.” Assuming the Office Action is equating “configured to reduce spillage” to “configured to receive and retain mortar,” Applicant has amended the claim language to incorporate the features of canceled claim 22 to clarify that the structural configuration (***a width of the mortar buffer of approximately 7/32 inches***) enables the functional significance in facilitating mortar application.

Since *Cottom* does not disclose the emphasized claim features, Applicant respectfully submits that *Cottom* does not anticipate at least the emphasized claim features and respectfully requests that the rejection to claim 18 be withdrawn. Because independent claim 18 is allowable over *Cottom*, dependent claims 19-21, 23-30 and 32-33 are allowable as a matter of law.

Additionally, although the Office Action asserts on page 2 that the “angle of inclination shown in the figures appears to be approximately 45 degrees,” Applicant notes that nothing in *Cottom* discloses that the drawings of *Cottom* are to scale. The Manual of Patent Examining Procedure (MPEP), section 2125, provides that “[W]hen the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.”

#### **Independent Claim 34**

Claim 34 recites (with emphasis added):

34. A wall of masonry units, comprising:
- a first masonry unit having a first surface *at least partially surrounded* by a first mortar buffer *having a width dimension of approximately 7/32 inches and wherein the first mortar buffer joins the first surface with adjacent surfaces of the first masonry unit at an approximately thirty degree angle of inclination between the first surface and each of the adjacent surfaces to facilitate mortar application;*
  - a second masonry unit having a second surface substantially parallel to the first surface of the first masonry unit, wherein the second surface is *at least partially surrounded* by a second mortar buffer *having a width dimension of approximately 7/32 inches and wherein the second mortar buffer joins the second surface with adjacent surfaces of the first masonry unit at an approximately thirty degree angle of inclination between the second surface and each of the adjacent surfaces to facilitate mortar application;* and
  - mortar disposed between the first and the second masonry units *and disposed on the first and the second mortar buffers.*

Applicant respectfully submits that *Cottom* does not disclose at least the emphasized claim features. In particular, nothing in the specification or figures of *Cottom* discloses “a first masonry

unit having a first surface *at least partially surrounded* by a first mortar buffer” or “*mortar disposed between the first and the second masonry units and disposed on the first and the second mortar buffers*,” as recited in independent claim 34. Page 2, section 3 of the Office Action alleges that “the mortar buffer is considered the grooves or openings 3, which at least partially surround at least the front surfaces of the blocks and are shown having a mortar disposed thereon.” Applicant respectfully disagrees with this statement. The first and second mortar buffers described in independent claim 34 each partially surround a surface of the respective masonry unit. The groove 3 in even the most liberal interpretations cannot be said to *partially surround* a surface of the masonry unit. Webster’s dictionary of “surround” includes the definition of “extending around the margin or edge of” among other definitions. To partially surround would still require such an extension around a margin or edge. The groove 3 shown in *Cottom* appears to be centrally located in a face of a block 1, and not partially surrounding any surface. Thus, since *Cottom* does not anticipate the explicit claim features of independent claim 34, Applicant respectfully requests that the rejection to independent claim 34 be withdrawn.

Also, nothing in *Cottom* discloses the additional features of independent claim 34 that provide approximate width and angle dimensions that facilitate mortar application.

Because independent claim 34 is allowable over *Cottom*, dependent claims 36-47 are allowable as a matter of law.

Additionally, although the Office Action asserts on page 2 that the “angle of inclination shown in the figures appears to be approximately 45 degrees,” Applicant notes that nothing in *Cottom* discloses that the drawings of *Cottom* are to scale. The Manual of Patent Examining Procedure (MPEP), section 2125, provides that “[W]hen the reference does not disclose that the

drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.”

Due to the shortcomings of the *Cottom* reference described in the foregoing, Applicant respectfully asserts that *Cottom* does not anticipate Applicant’s claims. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.

## **II. Claim Rejections - 35 U.S.C. § 102(b)**

### **A. Statement of the Rejection**

Claims 1-3, 5, 6, 9, 10, 15, 17, 18, 20, 21, 24, 30, 32 and 33 have been rejected under 35 U.S.C. § 102(a) as allegedly anticipated by *Schrader et al.* (“*Schrader*,” U.S. Pat. No. D457,971). Applicant respectfully traverses this rejection.

### **B. Discussion of the Rejection**

It is axiomatic that “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983)(emphasis added). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b). Applicant respectfully submits that *Schrader* does not disclose all of the claimed features.

### **Independent Claim 1**

For similar reasons described above for claim 1 in association with the *Cottom* reference, Applicant respectfully submits that nothing in the specification or figures of *Schrader* discloses at least the limitations “*wherein the mortar buffer is configured to receive and retain mortar,*

*wherein the configuration comprises the mortar buffer joining the first surface with adjacent surfaces of the masonry unit at an approximately thirty degree angle of inclination between the first surface and each of the adjacent surfaces,”* as recited in independent claim 1.

Because independent claim 1 is allowable over *Schrader*, dependent claims 2-3, 7-15 are allowable as a matter of law.

Additionally, although the Office Action asserts on page 3 that the “angle of inclination shown in the figures appears to be approximately 45 degrees,” Applicant notes that nothing in *Schrader* discloses that the drawings of *Schrader* are to scale. The Manual of Patent Examining Procedure (MPEP), section 2125, provides that “[W]hen the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.”

#### **Independent Claim 18**

For similar reasons described above for claim 18 in association with the *Cottom* reference, Applicant respectfully submits that nothing in the specification or figures of *Schrader* discloses at least the limitations “*wherein the mortar buffer is configured to receive and retain mortar, wherein the configuration comprises a width of the mortar buffer of approximately 7/32 inches,*” as recited in independent claim 18.

Because independent claim 18 is allowable over *Schrader*, dependent claims 19-21, 23-30 and 32-33 are allowable as a matter of law.

Additionally, although the Office Action asserts on page 3 that the “angle of inclination shown in the figures appears to be approximately 45 degrees,” Applicant notes that nothing in *Schrader* discloses that the drawings of *Schrader* are to scale. The Manual of Patent Examining Procedure (MPEP), section 2125, provides that “[W]hen the reference does not disclose that the

drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.”

Due to the shortcomings of the *Schrader* reference described in the foregoing, Applicant respectfully asserts that *Schrader* does not anticipate Applicant’s claims. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.

### **III. Claim Rejections - 35 U.S.C. § 102(b)**

#### **A. Statement of the Rejection**

Claims 1-3, 5, 6, 10, 15, 17, 18, 20, 21, 24, 32-34, 36-42 and 47 have been rejected under 35 U.S.C. § 102(a) as allegedly anticipated by *Conley* (“*Conley*,” U.S. Pat. No. 6,101,776). Applicant respectfully traverses this rejection.

#### **B. Discussion of the Rejection**

It is axiomatic that “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983)(emphasis added). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b). Applicant respectfully submits that *Conley* does not disclose all of the claimed features.

#### **Independent Claim 1**

For similar reasons described above for claim 1 in association with the *Cottom* reference, Applicant respectfully submits that nothing in the specification or figures of *Conley* discloses at least the limitations “*wherein the mortar buffer is configured to receive and retain mortar,*



*wherein the configuration comprises the mortar buffer joining the first surface with adjacent surfaces of the masonry unit at an approximately thirty degree angle of inclination between the first surface and each of the adjacent surfaces,”* as recited in independent claim 1.

Because independent claim 1 is allowable over *Conley*, dependent claims 2-3, 7-15 are allowable as a matter of law.

Additionally, although the Office Action asserts on page 3 that mortar buffers are shown at an “angle of inclination at approximately 45 degrees,” Applicant notes that nothing in *Conley* discloses that the drawings of *Conley* are to scale. The Manual of Patent Examining Procedure (MPEP), section 2125, provides that “[W]hen the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.”

#### **Independent Claim 18**

For similar reasons described above for claim 18 in association with the *Cottom* reference, Applicant respectfully submits that nothing in the specification or figures of *Conley* discloses at least the limitations “*wherein the mortar buffer is configured to receive and retain mortar, wherein the configuration comprises a width of the mortar buffer of approximately 7/32 inches,*” as recited in independent claim 18.

Because independent claim 18 is allowable over *Conley*, dependent claims 19-21, 23-30 and 32-33 are allowable as a matter of law.

Additionally, although the Office Action asserts on page 3 that the “angle of inclination shown in the figures appears to be approximately 45 degrees,” Applicant notes that nothing in *Conley* discloses that the drawings of *Conley* are to scale. The Manual of Patent Examining Procedure (MPEP), section 2125, provides that “[W]hen the reference does not disclose that the

drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.”

#### **Independent Claim 34**

Applicant respectfully submits that nothing in the specification or figures of *Conley* discloses at least the limitations “a first masonry unit having a first surface *at least partially surrounded* by a first mortar buffer *having a width dimension of approximately 7/32 inches and wherein the first mortar buffer joins the first surface with adjacent surfaces of the first masonry unit at an approximately thirty degree angle of inclination between the first surface and each of the adjacent surfaces to facilitate mortar application*,” or “a second masonry unit having a second surface substantially parallel to the first surface of the first masonry unit, wherein the second surface is *at least partially surrounded* by a second mortar buffer *having a width dimension of approximately 7/32 inches and wherein the second mortar buffer joins the second surface with adjacent surfaces of the first masonry unit at an approximately thirty degree angle of inclination between the second surface and each of the adjacent surfaces to facilitate mortar application*,” as recited in independent claim 34.

Because independent claim 34 is allowable over *Conley*, dependent claims 36-47 are allowable as a matter of law.

Additionally, although the Office Action asserts on page 3 that the “angle of inclination shown in the figures appears to be approximately 45 degrees,” Applicant notes that nothing in *Conley* discloses that the drawings of *Conley* are to scale. The Manual of Patent Examining Procedure (MPEP), section 2125, provides that “[W]hen the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.”

Due to the shortcomings of the *Conley* reference described in the foregoing, Applicant respectfully asserts that *Conley* does not anticipate Applicant's claims. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.

#### **IV. Claim Rejections - 35 U.S.C. § 103(a)**

##### **A. Rejection of Claims**

Claims 4, 7, 8, 19, 22 and 23 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Cottom*. Claims 11, 12, 14, 25-27, 29, 43, 44 and 46 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Ferrell* ("*Ferrell*," U.S. Pat. No. 2,667,664). Claims 13, 28 and 45 have been rejected under 35 U.S.C. 103(a) as allegedly unpatentable over *Cottom* in view of *Stuckey* ("*Stuckey*," U.S. Pat. No. 1,872,522). Applicant respectfully traverses these rejections.

##### **B. Discussion of the Rejection**

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a proper case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. See *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). Accordingly, to make a proper case for obviousness, there must be a prior art teaching or established knowledge that would suggest to a person having ordinary skill in the pertinent art to fill the voids apparent in the applied reference. It is respectfully asserted that no such case has been made in the outstanding Office Action.

Applicants respectfully submit that none of the art of record discloses at least the emphasized claim features described above for independent claims 1, 18, and 34. Since the addition of secondary references do not remedy these deficiencies, Applicants respectfully submit that claims 1, 18, and 34 are patentable over the art of record. Further, because dependent claims contain the allowable claim features of their respective base claim, Applicant respectfully submits that dependent claims 2-3, 7-15, 19-21, 23-30 and 32-33, and 36-47 are allowable as a matter of law and also request that the obviousness rejections to the claims be withdrawn.

Additionally, Applicant respectfully submits that the dependent claims are allowable on additional grounds. For instance, with respect to claims 4-8, 11-14, 19-23, 25-29 and 43-46 (*Cottom*), page 3, section 6 of the Office Action provides as follows:

Cottom provides each of the elements of these claims except for the claimed angle of inclination being approximately 30 degrees and the width of the mortar buffer is in the range of 1/16 of an inch to 1/2 of an inch, more particularly 7/16 of inch. To have made the angle of inclination approximately 30 degrees and the width of the bevels 1/16 of an inch, more particularly 7/16 of inch would have been an obvious choice of design at the time of the invention to one having ordinary skill in the art. Cottom provides motivation for "any desirable ornamental surface" at lines 47+. One of ordinary skill in the art would readily recognized that the dimensions of the blocks of Cottom could be sized as desired and that the width angle of the bevel could be changed to provide a desired ornamental look.

As acknowledged by the Office Action, *Cottom* does not anticipate claims 4-8, 11-14, 19-23, 25-29 and 43-46. Applicant has amended the claims to incorporate features of dependent claims 4 into independent claim 1 and features of dependent claim 22 into independent claim 18, and has canceled claims 4-6 and 22-23. Further, Applicant has amended claim 34 to incorporate features of both claims 4 and 22. Thus, the rejection to dependent claims 4-6 and 22-23 are rendered moot, but where applicable to independent claims 1, 18, and 34 and other claims comprising dimensional features, Applicant's discussion below is relevant. Applicant respectfully disagrees that the angle

and width of the beveled surfaces would have been “an obvious choice of design.” For example, the angle and/or width provide functional significance in facilitating mortar application, thereby reducing the likelihood of spillage on the surfaces of the masonry unit, and promoting further ingress with a jointer and trowel during application of the mortar. Because there is functional significance to the angle and/or width, it is incorrect to say such configurations are a mere design choice. Thus, Applicant respectfully requests that the rejection be withdrawn.

The Office Action asserts in section 9, page 6 the following:

In response to applicant’s argument that Cottom and Schrader fail to provide a mortar buffer configured to receive and retain mortar, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art...Applicant’s argument that the angle and width would not have been obvious choices of design because they have functional significance in facilitating mortar application is not found persuasive because the choice of design was for ornamental purposes, which is clearly suggested by Cottom. MPEP 2144 states that the rationale or motivation may be different from applicant’s.

It is respectfully noted as detailed above in the 102 sections that none of these references disclose angles or width dimensions. Applicant has amended claims 1, 18, and 34 to disclose the structural differences between the disclosed embodiments and the art of record. None of the cited references disclose angle and/or width dimensions, and thus cannot serve as a basis for a 102 rejection (see MPEP 2131.03). Further, the MPEP provides case law and guidance for obviousness of ranges in MPEP 2144.05 where the claimed dimensions “overlap or lie inside ranges disclosed by the prior art.” This case is distinguished at least because the Office Action has failed to show any art of record that recites angles or dimensions. Thus, Applicant respectfully requests that the rejection to claims 4-8, 11-14, 19-23, 25-29 and 43-46 be withdrawn, and further submits that any like rejection

as possibly applied to independent claims 1, 18, and 34 must necessarily fail for the reasons stated above.

**V. Canceled Claims**

As identified above, claims 4-6 and 22-23 have been canceled from the application through this Response without prejudice, waiver, or disclaimer. Applicant reserves the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

**CONCLUSION**

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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